**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929**

**CRP.No. 741 of 2007**

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**AGAINST THE ORDER DATED 09/07/2007 IN EP 637 2005 IN OS.650/2002 OF PRL.MUNSIFF COURT.,ERNAKULAM.**

**.....**

**REVN. PETITIONER/3RD JUDGEMENT DEBTOR:**

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**K.K.SUNDARAM, S/O.KUNJAN ACHARI,**
**KOCHUKAIPPAL JEWELLERY WORKS, PUTHENCRUZ P.O.,**
**KARIMUGAL, RESIDING AT NJARAVELIL HOUSE,**
**TEMPLE ROAD, KADAVANTHRA.**

**BY ADV. SRI.T.N.HAREENDRAN,**
**SRI.T.H.ARUNKUMAR.**

**RESPONDENTS/DECREE HOLDER & JUDGEMENT DEBTORS 1 AND 2:**

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1. **M/S.T.K.UNNIKRISHNA MENON & SONS,**
   **ARADHANA JEWELLERY, A REGISTERED PARTNERSHIP FIRM,**
   **REPRESENTED BY ITS MANAGING PARTNER T.U.SASIDHARAN**
   **AGED 47,S/O.LATE T.K.UNNIKRISHNA MENON, ARADHANA,**
   **14/578-A, NEAR MULLACKAL TEMPLE, EROOR WEST P.O.**

2. **M/S.SURVARNAM CHIT FUNDS,**
   **KOCHUKARIPAL BUILDINGS, KARIMUGAL,**
   **PUTHENCRUZ, ERNAKULAM REPRESENTED BY V.N.RAJI.**

3. **V.N.REJI, AGED 31,**
   **S/O.NARAYANANKUTTY, VALLAYIL, IRUMPANAM P.O.,**
   **THRIPUNITHURA.**

**BY**

**THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**ORDER ON I.A. NO. 1983/2007 IN C.R.P. NO. 741/2007**

**DISMISSED**

**09/08/2007.** **SD/- M.N.KRISHNAN, JUDGE.**

**//TRUE COPY//**

**prv.**

**M.N.KRISHNAN, J.**

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**C.R.P.No. 741 OF 2007**

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**Dated this the 9th August, 2007.**

**O R D E R**

This revision petition is preferred against the order of the Principal Munsiff, Ernakulam in E.P.637/05. The third judgment debtor who is ordered to be arrested for realisation of the decree debt has come forward with this writ petition. In the execution proceedings he has pleaded no means. The court below held that he was having 69 cents of property. He is only aged 40 years and he is visiting his father-in-law's shop and therefore he will be able to make the payment. I am afraid that the said approach is erroneous under Section 55 read with Order XXI Rules 37 and 40 CPC. The decree holder has to prove that the judgment debtor has the means to pay and he is intentionally evading payment. The means of a person cannot be arrived at by conjectures and surmises. When the court below itself found that he had sold the property in 2003 the court cannot now say that he is having means to pay. Just because he is visiting his father-in-law's shop one cannot hold him to be a person deriving income from there. These are all positive matters which have to be proved by the decree holder. Therefore, the order under challenge is not sustainable and therefore it is set aside and the matter is

remitted back to the executing court for fresh disposal after affording equal opportunities to the decree holder as well as the present writ petitioner to substantiate their respective contentions and the court to dispose it of in accordance with law. The petitioner is directed to appear before the court below on 6.9.2007 and on that day the court shall give notice to the decree holder and fix a date for further enquiry in the matter. Till the execution petition is disposed of the court shall not arrest and detain the present writ petitioner. C.R.P is disposed of accordingly.

**M.N.KRISHNAN**
**Judge**

jj